



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Rachel Geswaldo, et al.,

Plaintiffs,

-against-

Mark S. Gottlieb, CPA, et al.,

Defendants.

1:24-cv-02543 (AT) (SDA)

ORDER

STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE.

This is an action for professional malpractice, breach of agreement and breach of fiduciary duty arising out of Defendant Mark Gottlieb's role as Plaintiffs' economic loss expert in a dispute in the Superior Court, Chancery Division, Bergen County (the "Chancery Action"). (Compl., ECF No. 1, ¶¶ 5, 8, 10; *see also* Pls.' 9/23/24 Letter, ECF No. 35, at 1.) Pending before the Court is Defendants' motion to dismiss. (Defs.' Mot. to Dismiss, ECF No. 23.) In connection with that motion, the Court entered an Order on September 16, 2024, requiring the parties to address how, if at all, the state court's decision in the Chancery Action affected the viability of Plaintiffs' claims. (9/16/24 Order, ECF No. 33.) In response, Plaintiffs' counsel offered to provide the Court with relevant portions of the Chancery Action. (*See* Pls.' 9/23/24 Letter at 3.) The Court held oral argument on Defendants' motion to dismiss on October 1, 2024.

As set forth during oral argument, the Court may recommend to the District Judge that the pending motion to dismiss be converted to a motion for summary judgment so that the Court may consider matters outside the pleadings related to the Chancery Action. Federal Rule of Civil Procedure 12(d) provides that "[i]f, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for

summary judgment under Rule 56.” Fed. R. Civ. P. 12(d). In such case, “[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.” *Id.*; *see also Casey v. Odwalla, Inc.*, 338 F. Supp. 3d 284, 295 (S.D.N.Y. 2018) (“Courts can *sua sponte* convert a 12(b)(6) motion into one for summary judgment, but only after giving all parties a reasonable opportunity to present all the material that is pertinent to the motion.”) (citing, *inter alia*, *Sahu v. Union Carbide Corp.*, 548 F.3d 59, 67 (2d Cir. 2008)).

Accordingly, the Court shall provide Plaintiffs an opportunity to present any material that may be pertinent to Defendants’ motion. It is hereby Ordered that Plaintiffs shall present any such material no later than October 15, 2024. No later than October 22, 2024, Defendants shall file any reply.

SO ORDERED.

Dated: New York, New York
October 1, 2024



STEWART D. AARON
United States Magistrate Judge